

Lebowitz



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: R.C. Hendrick & Son, Inc.--Request for
Reconsideration

File: B-236497.2

Date: October 26, 1989

DIGEST

Prior dismissal of a protest is affirmed where the protester failed to timely file comments on the agency report or to express its continued interest in the protest. Protester's contention that its protest constituted a "request for reconsideration" of the contracting agency's denial of its agency-level protest and, as such, did not require the filing of comments on the agency report is not a basis for reopening the protest because the General Accounting Office (GAO) does not reconsider a decision initially rendered by a contracting agency and therefore the initial submission to GAO properly was considered an initial protest.

DECISION

R.C. Hendrick & Son, Inc., requests reconsideration of our dismissal of its protest under invitation for bids (IFB) No. DACA45-89-B-0103, issued by the Army Corps of Engineers for the construction of an aircraft maintenance hangar at Wurtsmith Air Force Base, Michigan. We dismissed the protest because Hendrick failed to timely file with our Office either its comments to the agency report or any expression of its continued interest in the protest.

We affirm our dismissal.

Hendrick filed an agency-level protest on June 1, 1989, challenging the contracting officer's rejection of its telefaxed bid modification as late. On July 24, the agency, in a decision by its Chief Counsel, denied Hendrick's agency-level protest. On August 10, Hendrick filed a bid

046870/139861

protest with our Office.^{1/} On August 16, we sent Hendrick a standard acknowledgment notice informing the protester of the requirement under our published Bid Protest Regulations, 4 C.F.R. § 21.3(k) (1989), that within 10 working days of receipt of the agency's report on the matter, the protester's written comments responding to the report or requesting that the case be decided on the existing record be submitted to our Office. Our notice further advised that the due date for the agency report was September 15, that the protester should notify our Office at that time if it did not receive the report, and that unless we heard from the protester within 10 working days of our receipt of the report, we would dismiss the protest.

The Corps timely filed its agency report with our Office by September 15. We dismissed the protest and closed our file on the matter on October 3 because the protester had still not filed comments on the report 12 working days after its assumed receipt of the report.

Hendrick now argues that its original filing with our Office on August 10 was a "request for reconsideration" of the agency's denial of its agency-level protest, pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.12(a), and for this reason comments or an expression of continued interest in the matter were not required. Hendrick also argues that, in any event, its original filing with our Office constituted comments to the agency report which merely reiterated the information the agency used when it denied Hendrick's agency-level protest.

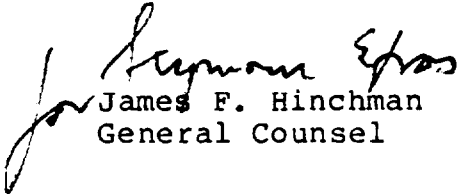
Hendrick's explanations provide no grounds for reopening the protest. We point out that Hendrick's characterization of its August 10 filing with our Office as a "request for reconsideration" is incorrect. Our Office does not "reconsider" a decision initially rendered by a contracting agency; our Office will only reconsider "a decision of the General Accounting Office." 4 C.F.R. § 21.12(a). Following the issuance of a decision by our Office, a protester may then request reconsideration of this decision, stating the factual and legal grounds upon which reversal or modification is deemed warranted and specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.12(a). Therefore, Hendrick's original filing with our

^{1/} While Hendrick's bid protest was styled as a "reconsideration" of the Army Chief Counsel's decision, we routinely treated the submission as a bid protest to the General Accounting Office following a denial of the firm's agency-level protest.

Office on August 10 was properly considered a bid protest by our Office, and Hendrick could not have requested reconsideration until our Office issued a decision in response to its protest.

Since our published regulations and our written notice to Hendrick acknowledging its protest expressly put the protester on notice of the requirement for the protester's filing in response to the agency report, it was incumbent upon Hendrick to exercise the degree of diligence necessary to comply with that requirement. CooperVision, Inc.--Reconsideration, B-231698.2, Aug. 26, 1988, 88-2 CPD ¶ 186. If Hendrick desired that its protest be decided on the existing record, without its separate comments on the agency report, Hendrick should have so advised our Office in a timely manner. Because Hendrick did not timely express its continued interest in the protest, the protest will not be reopened.

Accordingly, our prior dismissal is affirmed.


James F. Hinchman
General Counsel